

# **SECTION C**

## **Individual, Fiduciary, and Corporation Income Tax and Financial Institution Tax**

# **BASIC PROVISIONS AND TAX BASE OF THE NEBRASKA INDIVIDUAL, FIDUCIARY, AND CORPORATION INCOME TAX, AND FINANCIAL INSTITUTION TAX LAWS**

## ***Individual Income Tax\****

Nebraska individual income tax is imposed for each taxable year on the entire income of every resident individual. Nonresident and partial-year resident individuals are taxed on income derived from Nebraska sources. For tax year 2004, the rates are 2.56, 3.57, 5.12, and 6.84 percent of Nebraska taxable income. Brackets for each filing status are outlined in section 77-2715.02. A personal exemption credit is allowed against the tax computed for every federal personal exemption of the taxpayer. For tax year 2004, the credit is \$101.

The tax is calculated as a percentage of Nebraska taxable income. Additional taxes are computed on alternative minimum tax and premature and lump-sum distributions from qualified retirement plans at a rate equal to 29.6 percent of the federal tax amount. Nebraska taxable income starts with federal adjusted gross income, adds interest from non-Nebraska state and local government obligations, and subtracts U.S. government obligations and other adjustments decreasing income. Nebraska taxable income is further reduced by either federal itemized deductions less state and local income tax **or** a standard deduction equal to the smaller of the federal standard deduction or the Nebraska standard deduction amounts specified in section 77-2716.01(2)(b). Additional standard deduction amounts are allowed to elderly and blind taxpayers. For 2004, the standard deduction, including the additional standard deduction amounts, are adjusted for inflation. These deductions, together with the personal exemption credit, are reduced for higher income taxpayers. An additional tax which phases out the benefit of lower tax rates in the first income brackets is also computed by higher income taxpayers.

## ***Fiduciary Income Tax\****

Nebraska income tax is imposed for each taxable year on the adjusted federal taxable income of a resident estate or trust. Nonresident estates and trusts have the Nebraska income tax imposed for each taxable year on the portion of their income derived from sources within Nebraska.

In both cases, the tax is calculated as a percentage of Nebraska taxable income. The rates are 2.56, 3.57, 5.12, and 6.84 percent.<sup>1</sup> The brackets are established in section 77-2715.02.

## ***Corporation Income Tax\****

Nebraska corporate income tax is imposed upon any corporation or any other entity taxed as a corporation (not including a corporation with a valid federal subchapter S election) which is doing business in Nebraska. For a corporate taxpayer subject to tax in another state, the entire adjusted federal taxable income of the unitary business is apportioned according to the statutory formula to determine the portion attributable to sources within Nebraska. For a corporate taxpayer not subject to tax in another state, the entire taxable income is subject to tax in Nebraska. Each corporate taxpayer is required to file one, single combined tax return for each taxable year.

The corporation income tax rate is calculated as a percentage of the primary individual rate. The primary individual rate is 3.70 percent. The corporation rate on the first \$50,000 of taxable income is 150.8 percent of the primary rate and 211 percent of the primary rate on the excess. The 2004 rates are 5.58 percent and 7.81 percent, respectively.

### ***Financial Institution Tax\****

Every financial institution which maintains a permanent place of business in this state and actively solicits deposits from residents of this state must file a Nebraska Financial Institution Tax Return, Form 1120NF. This franchise tax is based on the average deposits of the financial institution. The rate of tax on deposits is 12.3 times the limitation rate. The limitation rate is 48.8 percent of the maximum corporate income tax rate in effect for the taxable year. The maximum corporate income tax rate in effect for the 2004 taxable year is 7.81 percent. The franchise tax imposed does not exceed the limitation amount. The limitation amount is the product of the net financial income of the financial institution multiplied by the limitation rate. Financial institutions pay a franchise tax of 47 cents per \$1,000 of average deposits, limited by the institution's net financial income multiplied by 3.81 percent. Each financial institution is required to file a separate franchise tax return.

The tax imposed is based on the amount of average deposits connected with the financial institution's operations in Nebraska. Such deposits are deposits which are accepted at the financial institution's offices located in Nebraska, plus deposits solicited from residents in Nebraska even if accepted at an office of the financial institution outside of Nebraska.

\*The taxes collected are deposited to the State General Fund for these tax programs.

# INDIVIDUAL, FIDUCIARY, AND CORPORATION INCOME TAXES

Statutory Reference and Description	Actual or Estimated Tax Expenditure Cost NA = Not Available
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## EXEMPTION

Nebraska utilizes the federal calculation of taxable income for corporations as a base for computing taxpayers' Nebraska liability. Federal adjusted gross income, plus and minus adjustments, is used to determine Nebraska taxable income for individuals. Income tax for fiduciaries is based on taxable income. Nebraska tax tables, rates, and credits are used to determine tax liability. Some deductions (Nebraska corporation income tax) and adjustments to income (Nebraska individual, fiduciary, and corporation income tax) adopted under the Internal Revenue Code and federal regulations are recognized by Nebraska due to the linkage between the two systems. Federal tax credits are not recognized unless specifically approved by the Legislature. Any federal taxable income that is exempt from state taxation pursuant to federal law is not taxed by Nebraska.

NA<sup>1</sup>

### Section 77-2715

A taxpayer with less than \$5,000 in adjustments increasing federal adjusted gross income shall not have a state liability greater than their federal income tax liability.

\$659,000

## DEDUCTIONS

### Section 77-2716(1)(a)(b)

Corporations and fiduciaries are allowed to subtract from federal taxable income, and individuals from federal adjusted gross income, interest or dividends on obligations of the United States and its territories to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States. A taxpayer is required to subtract from this amount any interest on indebtedness incurred to carry the obligations or securities described in this section and any expenses incurred in the production of interest or dividend income described to the extent that such expenses are deductible in determining federal taxable income. There shall be subtracted that portion of the total dividends and other income received from a regulated investment company which is attributable to obligations described in subdivision (a) of this subsection as reported to the recipient by the regulated investment company (U.S. obligations).

\$13,786,000  
(State taxation  
prohibited)

### Section 77-2716(2)

There shall be allowed a net operating loss derived from or connected with Nebraska sources computed under rules and regulations adopted and promulgated by the State Tax Commissioner consistent, to the extent

\$6,956,000

possible under the Nebraska Revenue Act of 1967, with the laws of the United States. For a resident individual, estate, or trust, the net operating loss computed on the federal income tax return shall be adjusted by the modifications contained in this section. For a nonresident individual, estate, trust or partial-year resident individual, the net operating loss computed on the federal return shall be adjusted by the modifications contained in this section and any carry-overs or carry backs shall be limited to the portion of the loss derived from or connected with Nebraska sources.

**Section 77-2716(3)**

There shall be subtracted from federal adjusted gross income for all taxable years beginning on or after January 1, 1987, the amount of any state income tax refund to the extent such refund is included in federal adjusted gross income. \$3,518,000

**Section 77-2716(5)**

Taxpayers are allowed to subtract from federal taxable income any dividends received or deemed to be received from corporations that are not subject to the Internal Revenue Code. NA

**Section 77-2716(6)**

Corporate taxpayers are allowed to subtract from federal taxable income a portion of the income subject to tax by a foreign country in excess of the maximum applicable federal tax rate for tax years beginning or deemed to begin on or after January 1, 1985. \$8,825,000

**Section 77-2716(7)**

Federal adjusted gross income shall be modified to exclude any amount repaid by the taxpayer for which a reduction in federal tax is allowed under section 1341(a)(5) of the Internal Revenue Code. NA

**Section 77-2716(9)(a)**

Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be reduced, to the extent included, by income from interest, earnings, and state contributions received from the Nebraska educational savings plan trust created in sections 85-1801 to 85-1814. \$0

**Section 77-2716(9)(b)**

Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be reduced, to the extent not deducted for federal income tax purposes, by the amount of any gift, grant, or donation made to the Nebraska educational savings plan trust for deposit in the endowment fund or trust. Minimal

**Section 77-2716(9)(c)**

Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income is reduced by any contributions as a participant in the Nebraska educational savings plan trust, not to exceed \$500 per married filing separate return or \$1,000 for any other return. \$900,000

**Section 77-2716.01(2)**

Every individual who did not itemize deductions on his or her federal return shall be allowed to subtract from federal adjusted gross income a Nebraska standard deduction based on the filing status used on the federal return. The standard deduction is reduced for higher income taxpayers. For 2004, the Nebraska standard deduction is adjusted for inflation pursuant to section 77-2716.01(2)(c). \$142,061,000

**Section 77-2716.01(3)**

Every individual who itemized on his or her federal return shall be allowed to subtract from federal adjusted gross income the greater of either the Nebraska standard deduction or all of his or her federal itemized deductions, except for the amount deducted on the federal return for state or local income taxes paid. Itemized deductions are reduced for higher income taxpayers. \$202,019,000

**Section 77-2734.07**

Corporate taxpayers are to add to their federal taxable income the amount of any federal deduction because of a carry forward of a net operating loss or any capital loss. Corporate taxpayers are allowed a deduction for a carry forward of a net operating loss or a capital loss connected with operations in Nebraska. For a net operating loss or capital loss incurred by a corporation in taxable years beginning or deemed to begin on or after January 1, 1987, the deduction is allowed only for each of the five tax years succeeding the year of the loss. (No carry back is allowed). \$14,685,000

**Section 76-1235**

Certain awards to individuals and businesses under LB 254 (Relocation Assistance Act) are deductible for state income tax purposes to the extent the payment was included in federal adjusted gross income. NA

## EXCLUSIONS

**Section 77-2715.09**

Every resident individual or trust may elect under this section to subtract from federal adjusted gross income or taxable income the gain from the sale or exchange of capital stock of a corporation acquired by the individual (i) on account of employment by such corporation or (ii) while employed by such corporation. The election may be made for all taxable years beginning or deemed to begin on or after January 1, 1989. \$37,053,000

**Section 77-2716(4)**

Federal adjusted gross income shall be modified to exclude the portion of the income or loss received from a small business corporation with an election in effect under subchapter S of the Internal Revenue Code that is not derived from or connected with Nebraska sources as determined in section 77-2734.01. \$28,263,000

## CREDITS

### **Section 77-2715.07(1)(a)**

A nonrefundable credit for qualified residents is allowed in an amount equal to 100 percent of the federal credit for the elderly and the disabled allowed under the Internal Revenue Code. \$30,000

### **Section 77-2715.07(1)(a)(b)**

A nonrefundable credit for qualified residents is allowed in an amount equal to 25 percent of the federal credit for child/dependent care. \$3,861,600

For returns filed reporting federal adjusted gross income of \$29,000 or less, a refundable credit equal to a percentage of the federal credit allowable under section 21 of the Internal Revenue Code of 1986, as amended, whether or not the federal credit was limited by the federal tax liability. The percentage of the federal credit is 100 percent for incomes not greater than twenty-two thousand dollars, and the percentage is reduced by 10 percent for each one thousand dollars or fraction thereof, by which the reported federal adjusted gross income exceeds twenty-two thousand dollars. \$4,667,500

### **Sections 77-2715.07(1)(c) 77-2715.07(4)(a) and 77-2730**

A resident individual and a resident estate or trust is allowed a credit against income tax otherwise due for the amount of any income tax imposed on them for the taxable year by another state or political subdivision or the District of Columbia on income derived from sources therein which is also subject to income tax. \$22,956,700

### **Sections 77-2715.07(2)(c), 77-2734.03(4), and 77-5201 through 77-5214**

Individuals, estates, trusts, and corporations are allowed a refundable credit under the Beginning Farmer Tax Credit Act. \$33,000

### **Sections 77-2715.07(3)(b), 77-2715.07(4)(b), 77-2734.03(3), and Sections 13-203 through 13-207**

Individual taxpayers (sole proprietorships, partnerships, and shareholders of subchapter S corporations), estates, trusts and corporate taxpayers are allowed a credit for contributions to certified community betterment programs. \$63,000

### **Section 77-2716.01**

A nonrefundable credit of \$101 for 2004 is allowed against Nebraska tax liability for every federal personal exemption. It is reduced five dollars for every \$5,000 of adjusted gross income above a statutory threshold. \$117,376,600

### **Section 77-2731**

If an individual taxpayer is regarded as a resident both of this state and another jurisdiction for purposes of income taxation, he or she is allowed to reduce the tax on that portion of income which is subjected to tax in both jurisdictions solely by virtue of his or her dual residence, provided the other jurisdiction allows a similar reduction. The reduction equal to that portion of the lower of the two taxes applicable to the income taxed twice which the tax imposed by Nebraska bears to the combined taxes of the two jurisdictions on the income taxed twice. Minimal

**Section 77-2734.03(1)**

A credit is allowed to the following organizations for the amount of in lieu of intangible tax paid: (a) any insurer paying a tax on premiums and assessments pursuant to section 77-908 or 81-523; (b) electric cooperatives organized under the Joint Public Power Authority Act; or (c) credit unions. This credit includes assessments paid to the Comprehensive Health Insurance Pool and is allowed as an offset against premium and related retaliatory tax liability pursuant to section 44-4233.

\$7,918,000

**Section 77-2734.03(2) and Sections 66-4,118 through 66-4,132**

A corporate, individual, or fiduciary taxpayer who purchases non-highway use gasoline for agricultural, quarrying, industrial, or other non-highway use is entitled to a refundable credit against the purchaser's Nebraska income tax liability for the amount of tax paid during the year, less 2.25 cents per gallon, from which 1.25 cents per gallon is transferred to the Agricultural Alcohol Fuel Tax Fund.

Net credit allowed .....	\$6,375,000
Agricultural Alcohol Fuel Tax Fund .....	384,000
Administrative fee .....	0.00
<b>Total credit .....</b>	<b>\$5,991,000</b>

**Section 77-27,187 (Employment Expansion and Investment Incentive Act - LB 608**

(See section V)

Tax credits are provided for qualifying businesses which increase investment by at least \$250,000 and increase net employment by an average of five full-time equivalent employees during a two year period. Credits are refundable and may be used to reduce the taxpayer's income tax liability or to obtain a refund of sales and use tax paid. The credits are \$3,000 per net new employee and \$2,750 per \$50,000 net new investment.

**Section 77-4101 (Employment and Investment Growth Act - LB775, as amended)**

(See section V)

A taxpayer's business may be eligible for tax incentives under the Employment and Investment Growth Act if the business is in a qualified activity and the plans result in (a) the investment in qualified property of at least \$3,000,000 and the hiring of at least 30 new employees, (b) the investment in qualified property of at least \$10,000,000 and the hiring of at least 100 new employees, or (c) the investment in qualified property of at least \$20,000,000.

**Section 77-4901 (Quality Jobs Act - LB 829, as amended)**

(See section V)

Taxpayers who have previously been approved may qualify for additional benefits beyond those received under section 77-4101 (LB 775, Each taxpayer must make an investment of \$50 million in qualified property and hire 500 new employees, or \$100 million in property and hire 250 new employees by the end of the sixth year after filing of the application. No new applications may be accepted.



**Section 77-5401 (Rural Economic Opportunities Act - LB 936)**

(See Section V)

Any taxpayer who qualifies for the incentives by adding the number of employees, wages, and investment required in section 77-5405 shall be entitled to: (1) A credit equal to 5 percent of the amount by which the total compensation paid during the year exceeds the average compensation paid at the project multiplied by the number of equivalent base-year employees; and (2) A credit equal to 10 percent of the investment made in qualified property at the project.

**Section 77-5501 (Invest Nebraska Act - LB 620)**

(See Section V)

A qualifying business selects one of the following options in their application: (1) \$10,000,000 investment and 25 new employees whose annual wage exceeds the Nebraska average annual wage. This option is only available for projects located outside of counties with 100,000 or more population; (2) \$50,000,000 investment and 500 new employees or \$100,000,000 investment and 250 new employees. The new employees annual wage must exceed 110 percent of the Nebraska average annual wage; and (3) \$200,000,000 investment and 500 new employees whose annual wage exceeds 125 percent of the Nebraska average annual wage. If the company reaches and maintains the selected level, they are eligible for benefits.

## PREFERENTIAL TAX RATES

**Section 77-2734.02(1)**

The corporation income tax rate is calculated as a percent of the primary rate. The primary rate is 3.70 percent. The corporation rate on the first \$50,000 of taxable income is 150.8 percent of the primary rate and 211 percent of the primary rate on the excess. The 2004 corporation income tax rates are 5.58 percent and 7.81 percent, respectively.

\$6,977,800

**Section 77-2734.02(2)**

Insurance companies are subject to the lesser of the rate set forth in section 77-2734.02(1) or the rate of tax imposed in the state or country in which the insurance company is domiciled if the state or country of domicile imposes a retaliatory tax on Nebraska insurance companies which includes the Nebraska corporation income tax.

NA

**Section 77-2715.02**

The individual and fiduciary income tax rates are calculated as a percentage of the primary rate. The primary rate is 3.70 percent. The primary rate set by the Legislature is multiplied by the following factors to compute the tax rates. The factors for the brackets, from lowest to highest bracket, are .6932, .9646, 1.3846, and 1.848. The tax rates for the 2004 tax year are 2.56, 3.57, 5.12, and 6.84 percent of Nebraska taxable income, using the brackets listed in section 77-2715.02.

NA<sup>2</sup>

# FINANCIAL INSTITUTION TAXES

Statutory Reference and Description	Actual or Estimated Tax Expenditure Cost NA = Not Available
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## EXEMPTION

### Sections 77-3802(1), 77-3801(4)(a), 77-3801(4)(b)

A franchise tax is imposed on all financial institutions doing business in Nebraska. Federal credit unions and mutual fund companies are exempt.	\$355,000
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## CREDIT

### Sections 13-201 through 13-208

Financial institutions paying the tax imposed pursuant to sections 77-3801 to 77-3807 are allowed a credit for contributions to certified community betterment programs.	\$38,500
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<sup>1</sup> Figures are not available, nor applicable for any deductions (corporate) and adjustments to income (individual, fiduciary, and corporate) allowed by the Internal Revenue Service and federal regulations; since Nebraska corporation income tax is based on federal taxable income, Nebraska individual income tax is based on federal adjusted gross income, plus and minus adjustments, and Nebraska fiduciary income tax is based on taxable income.

<sup>2</sup> The four-bracket Nebraska individual and fiduciary income tax system may not be considered a "preferential tax rate" and hence, not a true tax expenditure.

# **INDIVIDUAL, FIDUCIARY, CORPORATION INCOME TAX, AND FINANCIAL INSTITUTION TAXES RECOMMENDATIONS**

The Nebraska Department of Revenue has no recommendations.